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PATRICK E. DUFFY
BY _____
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

GEORGE COLLINS,)	CV 07-11-H-DWM
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
STATE OF MONTANA,)	
)	
Defendant.)	
_____)	

United States Magistrate Keith Strong entered Findings and Recommendation in this matter on February 16, 2007. Ellenburg did not object and is therefore not entitled to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court will review the Findings and Recommendation for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000).

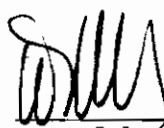
Judge Strong concluded the court lacks subject matter jurisdiction and I agree. Collins is not incarcerated and has

not presented a viable claim before this Court. The Court cannot review his appeal of the Montana Supreme Court decision. See *Gruntz v. County of Los Angeles (In re Gruntz)*, 202 F.3d 1074, 1078 (9th Cir. 2000) (en banc) (citation and quotation omitted).

Collins prematurely filed an appeal after Judge Strong entered his Findings and Recommendation. The appeal was untimely and will not be considered. Collins may refile an appeal following the entry of this order.

Accordingly, based upon the foregoing I adopt Judge Strong's Findings and Recommendation (dkt #4) in full: Plaintiff's case is DISMISSED WITHOUT PREJUDICE. All pending motions are deemed moot.

DATED this 3rd day of March, 2007.


Donald W. Molloy, Chief Judge
United States District Court

